1

CASE NO. 8:22-cv-00932-JVS (DFMx)

CONSENT DECREE

ase 8:22-cv-00932-JVS-DFM Document 29 Filed 12/06/23 Page 1 of 10 Page ID #:264

SECOND AMENDMENT TO CONSENT DECREE

The following Second Amendment to the Consent Decree (this "Second Amendment") is entered into by and among Plaintiff Orange County Coastkeeper ("Coastkeeper") and Defendants Hixson Metal Finishing, FPC Management LLC, and Reid Washbon, Trustee of the Reid Washbon Trust (collectively, "Defendants"). The entities entering into this Second Amendment are each an individual "Settling Party" and collectively the "Settling Parties."

RECITALS

- **A.** WHEREAS, Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California;
- **B.** WHEREAS, Coastkeeper's mission is to protect swimmable, drinkable, fishable water and promote watershed resilience throughout our region;
- **C. WHEREAS**, Hixson Metal Finishing is a metal finishing and non-destructive testing facility servicing the aerospace and defense industries;
- **D. WHEREAS**, FPC Management LLC owns the real property underlying a portion of Hixson's industrial operations conducted at 861 Production Place, Newport Beach, CA 92663;
- **H. WHEREAS**, the real property underlying a portion of Hixson's industrial operations conducted at 816 Production Place, Newport Beach, CA 92663 is owned by the Reid Washbon Trust, and Mr. Reid Washbon is the trustee;
- **I.** WHEREAS, Defendants own real property and/or operate a metal finishing and testing facility at 816 and 817-861 Production Place, Newport Beach, California 92663 (the "Facility");
- **J. WHEREAS**, Defendants' operations at the Facility result in discharges of pollutants into waters of the United States and are regulated by the Clean Water Act Sections 301(a) and 402. 33 U.S.C. §§ 1311(a), 1342;
- **K. WHEREAS**, the Parties entered into a Consent Decree entered by this Court on December 2, 2022;

2

4

5

6

7

8 9

10

11 12

13

14 15

16

17

18 19

20

21

22

23

24

25

26

27

28

L. WHEREAS, the Parties entered into a First Amendment to Consent Decree entered by this Court on January 27, 2023; and

M.WHEREAS, the Settling Parties have agreed that modifying the deadline to comply with certain obligations of the Consent Decree is in their mutual interest and in furtherance of the goals of the Clean Water Act.

AGREEMENT

NOW THEREFORE, it is hereby stipulated between the Settling Parties that the following amendments to the Consent Decree, attached hereto as Exhibit A along with the previously executed First Amendment to Consent Decree, be made:

> 1. The final sentence of Paragraph 12.3 of the Consent Decree shall be amended to read as follows:

"Hixson shall complete construction or installation of the Advanced BMPs in accordance with the BMP Work Plan by no later than December 1, 2023 (the "Preferred BMP Deadline"), April 15, 2024 (the "Extended Preferred BMP Deadline") or December 1, 2024 (the "Outside BMP Deadline")."

> 2. Paragraph 21 of the Consent Decree shall be amended to read as follows:

"Hixson shall develop and implement BMPs such that contaminants in storm water discharges from the Facility maintain concentrations that are equal to or less than the values set forth in Table 1 below (the "Table 1 Values"). Failure to achieve Table 1 Values shall not be deemed a violation of the Permit or this Consent Decree so long as Hixson continues to make timely and diligent efforts as required by the Permit and herein to further reduce the level of pollutant discharges. Starting in the 2023-2024 reporting year if the Preferred BMP Deadline is met or the 2024-2025 reporting year if the Extended Preferred Deadline or Outside BMP Deadline are met, (i) any Permit NEL exceedance and/or, separately, (ii) any two exceedances of any Table 1 Value at any one Discharge Location or three exceedances of the same Table 1 Value from any combination of discharge locations in the annual monitoring year shall trigger the Action

3

2

4 5

6

7

8

9

10

11

12 13

14

15

16

17

18

19

20

21

22

23

24

25 26

27

28

3. Paragraph 29.1 of the Consent Decree shall be amended and restated in its entirety as follows:

"If Hixson is unable to meet the Extended Preferred BMP Deadline, Hixson will make an additional payment of Five Thousand Dollars (\$5,000) to partially defray costs associated with Coastkeeper's monitoring of Hixson's compliance with this Consent Decree. Such payment shall be made by May 1, 2024. Payment shall be delivered via certified mail or overnight delivery to: Orange County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626, unless made via wire transfer."

- 4. Paragraph 31.1 of the Consent Decree shall be amended and restated in its entirety as follows:
- "31.1 If Hixson completes the installation or construction of Advanced BMPs after the Preferred BMP Deadline, but before the Extended Preferred BMP Deadline (i.e. between December 1, 2023 and April 15, 2024), Hixson shall pay an additional Seven Thousand and Five Hundred Dollars (\$7,500) to the Newport Bay Conservancy to fund environmental project activities that will benefit Southern California waters, including restoration and/or preservation of Newport Bay. The payment shall be made by May 1, 2024. The payment to the Newport Bay Conservancy shall be made as instructed in Paragraph 31 above. Hixson shall provide Coastkeeper with a copy of such payment and copy Coastkeeper and its attorneys on any related correspondence."
 - 5. A new Paragraph 31.2 shall be added to the Consent Decree as follows:
- "31.2 If Hixson is unable to meet the Extended Preferred BMP Deadline, Hixson will make an additional payment of Fourteen Thousand and Five Hundred Dollars (\$14,500) to the Newport Bay Conservancy to fund environmental project activities that will benefit Southern California waters, including restoration and/or preservation of Newport Bay. The payment shall be made by December 1, 2024. The payment to the Newport Bay Conservancy shall be made as instructed in paragraph 31 above. Hixson

shall provide Coastkeeper with a copy of such payment and copy Coastkeeper and its attorneys on any related correspondence." 6. All other provisions of the Consent Decree shall remain in full force and effect, unaltered by this Second Amendment. [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

1	IN WITNESS WHEREOF, the undersigned have executed this Second		
2	Amendment as of the date first set forth below.		
3			
4	APPROVED AS TO CONTENT		
5			
6	Dated:, 2023	By:	
7		Garry Brown Orange County Coastkeeper	
8		Orange County Coastkeeper	
9	Dated: November 2, 2023	By: Jak C. Streene	
10	Dated. MOVELLING 2, 2023	Name: Toughas C Grand	
11		Title: President Hixson Metal Finishing	
12		J	
13	Dated:, 2023	By:	
14		Name:	
15			
16	Dated:, 2023	By:	
17		Name:	
18			
19	APPROVED AS TO FORM		
20		ORANGE COUNTY COASTKEEPER	
21	2000		
22	Dated:, 2023	Barry Lee	
23		Attorney for Plaintiff	
24		Orange County Coastkeeper	
25		STILES POMEROY LLP	
26	Dated: November 2, 2023	By: Court Ponerry	
27		Name: Charles H. Pomerby	
28	[PROPOSED] AMENDMENT	Title: Attorney for Defendants	
	TO CONSENT DECREE	6 CASE NO. 8:22-cv-00932-JVS (DFMx)	

Amendment as of	the date first set for	th below.
APPROVED AS	TO CONTENT	
Dated:	, 2023	Ву:
		Garry Brown Orange County Coastkeeper
		Orange County Cousticoper
Dated:	2023	Ry
Dated.	, 2023	By: Name:
		Title:
		Ann.
Dated: 11- 2	, 2023	By:
3		Name: ADAM MIKKELS EN Title: MANAGER, FPC MANAGEMEN
1		LL
Dated:	2023	By:
5 Bated.	, 2023	Name:
7		Title:
3		
APPROVED AS	TO FORM	
		ORANGE COUNTY COASTKEEPER
) Dated:	. 2023	
		Barry Lee
2		Attorney for Plaintiff Orange County Coastkeeper
3		Orange County Coasticoper
4		STILES POMEROY LLP
5 Dated:	, 2023	By:
5		Name:
7		Title:

1	IN WITNESS WHEREOF, the undersigned have executed this Second		
2	Amendment as of the date first set forth	below.	
3	整		
4	APPROVED AS TO CONTENT		
5			
6	Dated:, 2023	By:	
7		Garry Brown	
8		Orange County Coastkeeper	
9	D. ()		
10	Dated:, 2023	By: Name:	
11		Title:	
12			
13	Dated:, 2023	By:	
14		Name:	
15			
16	Dated: $1 - 2$, 2023	By:	
17		Name: REID WASMBON Title: DWNER	
18		Title. Swife fe	
19	APPROVED AS TO FORM		
20		ORANGE COUNTY COASTKEEPER	
21			
22	Dated:, 2023	Barry Lee	
23		Attorney for Plaintiff	
24		Orange County Coastkeeper	
25		STILES POMEROY LLP	
26	Dated:, 2023	By:	
27		Name:	
28	AMENDMENT TO	Title:	
	CONSENT DECREE	6 CASE NO. 8:22-cv 00932-IVS (DFMx)	

1	IN WITNESS WHEREOF, the undersigned have executed this Second		
2	Amendment as of the date first set forth below.		
3			
4	APPROVED AS TO CONTENT		
5		// 0	
6	Dated: November 27, 2023	By: Lary Bown	
7		Garry Brown Orange County Coastkeeper	
8		Orange County CoastReeper	
9	Dated:, 2023	$\mathrm{Rv}\cdot$	
10	, 2023	By: Name:	
11		Title:	
12			
13	Dated:, 2023	By:	
14		Name: Title:	
15			
16	Dated:, 2023	By:	
17		Name: Title:	
18			
19	APPROVED AS TO FORM		
20		ORANGE COUNTY COASTKEEPER	
21	D . 1 November 27 . 2022	A.	
22	Dated: November 27, 2023	Barry Lee	
23		Attorney for Plaintiff	
24		Orange County Coastkeeper	
25		STILES POMEROY LLP	
26	Dated:, 2023	By:	
27		Name:	
28	AMENDA CENTE TO	Title:	
	AMENDMENT TO CONSENT DECREE	6 CASE NO. 8:22-ev-00932-JVS (DFMx)	